vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5126 OF 2005

Kalyani Steels Ltd. ... Petitioner

V/s.

Vividh Kamgar Sabha & Anr. ... Respondent

Mr.J.P. Cama i/b Haresh Mehta & Co.for Petitioner
Mr.N.A. Kulakarni for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 6, 2005**

P.C.:

. The Petition challenges two orders passed by the Industrial Tribunal, Pune. The first orderis dated 30.4.2005 below exhibit C8 whereby the Industrial Tribunal has directed all issues to be heard together including those issues which the Petitioner had raised in its application at exhibit C8 as preliminary issues. By the second order passed on the same day below Exhibit U10, the Industrial Court directed that Kalyani Carpenter Steels Limited should be impleaded as an additional party to the Reference alongwith the petitioner.

2. Initially, the respondent Sabha had filed a complaint under the MRTU & PULP Act seeking

regularisation of the workmen employed with Kalyani Steels Limtied i.e., the Petitioner herein. This complaint culminated in the judgment of the Supreme Court in *Vividh Kamgar Sabha v/s. Kalyani Steels Ltd. & Anr.,***2001(1) CLR 532** wherein it was held that a complaint under MRTU & PULP Act was not maintainable for seeking regularisation of employment if the employer disputes that the workmen were his employees. However, by this judgment, the Supreme Court had clarified that the workmen would be entitled to raise a dispute before appropriate forum to get a declaration to the effect that they are employees of the Petitioner herein. Such a dispute is directed to be decided on merits without taking into consideration any observations made or finding given by the Industrial Court in the earlier complaint. Accordingly, the workmen through the Petitioner-Sabha obtained a Reference for adjudicating their disputes with regard to the termination of the services of the canteen workers and regularisation with Kalyani Steels Limited, the Petitioner herein. After the dispute was referred for adjudication in Reference (IT) No.19 of 2004, the Petitioner filed an application Exhibit C8 contending that certain issues should be tried as preliminary issues. These issues are: (1)whether the Reference is maintainable; (2)whether the Reference can be prosecuted by the respondent-Union

when there is a recognised union in the concern; (3)whether the Reference is barred by section 59 of the MRTU & PULP Act; and (4)Whether it is barred by res judicata.

3. The Industrial Court has held that although these issues are required to be decided, they would be decided alongwith the other issues and not as preliminary issues. The issues are not mere questions of law according to the Industrial Court but pertain to questions of fact for which evidence was necessary to decide the same.

4. The learned Counsel appearing on behalf of the petitioner submits that when the issue of jurisdiction is raised, it goes to the root of the matter and therefore, the issue must be decided as a preliminary issue and not with other issues. Reliance is placed on the judgments of this Court in *Hydroflex (India) Ltd. v/s. A.D. Shelar & Ors.*, **2005 I CLR 48;** *Municipal Corporation of City of Amravati v/s. A.R. Kamble Ors.*, **1994 II CLR 180** and *Pauni Shikshan Sanstha & Ors. v/s. S.R. Uparikar & Ors*, **2001 I CLR 232.**

5. In my view, the objections raised regarding the jurisdiction are not those which cannot be decided at

the final hearing of the Reference. The objection raised is that there is a bar under section 59 of the MRTU & PULP Act and, therefore, the Reference itself is not maintainable. However, the Supreme Court in the case of *Vividh Kamgar Sabha* (supra) has directed that a dispute could be raised before the appropriate forum. In these circumstances, I see no reason why the order of the Industrial Court should be disturbed. Furthermore, as regards the preliminary issue relating to the maintainability of the Reference which was being prosecuted by a recognised union also need not be considered since prima facie it appears that such a Reference is maintainable. Apart from this, the Industrial Court has held and in my view, rightly that evidence would have to be led on all the issues raised by the Petitioner before deciding the same. I see no reason to differ from the findings of the Industrial Court and the order passed below C8 is confirmed.

6. The other order challenged in this petition is with respect to impleadment of the company M/s.Kalyani Carpenter Special Steels Limited. This amendment is sought in view of the pleading of the petitioner that Kalyani Steels Ltd. has been sold to M/s.Kalyani Carpenter Special Steels Limited and, therefore, that was a necessary party. The Tribunal has directed the

impleadment of M/s.Kalyani Carpenter Special Steels Limited as an additional party and it is to be shown as party No.1 at serial No.2 in the cause title. Objection is taken to this procedure adopted by the Tribunal by relying on the judgment of this Court in *Glaxo India ltd. V/s. Chemical Employees' Union & Ors.,* **1998 I CLR 54**. It is submitted that at best, the party could have been summoned and not added as a party in the Reference. In the affidavit filed by the Respondent, it is stated that after the order of 30.4.2005 was passed by the Industrial Tribunal, notice was issued to M/s.Kalyani Carpenter Special Steels Limited and they appeared in the proceedings. By an application dated 11.7.2005, an adjournment was sought for filing the written statement.

7. In my view, when a Reference is made, it is not proper for the Industrial Court to implead a party to the dispute. A Reference is made only between the parties concerned between whom a dispute has arisen. Therefore, at best, the respondent union could have sought a corrigendum from the Government for amendment of the Reference. The Tribunal could not have on its own amended the Reference. The Tribunal gets jurisdiction to adjudicate the Reference only between the parties to the Reference as sent to it for adjudication by the appropriate government. It may be

possible for the Industrial Court or Labour Court to add parties to a complaint filed under the MRTU & PULP Act or to delete parties to the complaint. Even in an application filed under section 33-C(2), this may be possible. However, while adjudicating a Reference, the Industrial Tribunal or Labour Court is bound by the order of reference and cannot add or delete parties to the dispute, thereby amending the reference. It would be necessary to have the Reference amended by a corrigendum.

8. However, the present Petition has been filed by Kalyani Steels Limited which claims that they sold the undertaking. Kalyani Steels Limited cannot be aggrieved by the order directing Kalyani Carpenter Special Steels Limited to be added as a party and therefore, cannot challenge the same.

9. Petition rejected. No order as to costs.